IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

S.T.Rev..No.248 of 2007

T.A.NO.455/2004 OF KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM (ORDER DATED 30.01.2007)

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PETITIONER/APPELLANT:-

M/S. NEW KERALA STEEL CORPORATION,
UPPALAM ROAD, THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE JOSEPH

RESPONDENT: RESPONDENT:-

THE STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MYHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & Harun-Ul-Rashid,J.

S.T.Rev.No.248 of 2007

Dated, this the 1st day of August, 2007

ORDER

H.L.Dattu,C.J.

The matter arises under the provisions of the Kerala General Sales Tax Act, 1963 ("Act" for short).

(2) The assessee is a dealer registered under the provisions of the K.G.S.T.Act and Central Sales Tax Act. For the assessment year 1990-91, the assessing authority had completed the assessments and he was of the opinion that the assessee had suppressed the inter-State purchases of iron and steel in a sum of Rs.10,66,500/-. While computing the tax liability, the assessing authority had added two times the alleged suppression of the inter-State purchases with 20% gross profit.

(3) Aggrieved by the aforesaid order passed by the assessing authority, the assessee had carried the matter in appeal before the first appellate authority. The first appellate authority has rejected the appeal and thereby has confirmed the order passed by the assessing authority. The assessee, being disturbed by the orders passed by the assessing authority as well as the first appellate authority, had carried the matter in second appeal before the Tribunal in T.A.No.249 of 2001. The Tribunal by its order dated 8.10.2001 had allowed the assessee's appeal and had further issued certain directions to the assessing authority. Those directions are as under:

> "Having regard to the facts and circumstances of the case, we find that the prayer on behalf of the appellant is only just and reasonable. Accordingly, we set aside the orders of the authorities below and direct the assessing authority to furnish the copies of invoices and declarations in this case and afford an

effective opportunity to cross examine the alleged consignors and the assessing authority will complete the assessment afresh according to law".

(4) The assessing authority being of the opinion that he may not be in a position to comply with the orders and directions issued by the Tribunal while disposing of the T.A.No.249 of 2001 dated 8.10.2001, had filed an application under Section 43 of the Act to rectify an error apparent on the face of the record in the orders passed by the Tribunal dated 8.10.2001. Even before the said application could be considered by the Tribunal, the assessing authority has proceeded to pass yet another fresh assessment order without complying with the positive directions issued by the Tribunal. The fresh assessment order was the subject matter of first appeal before the Appellate Assistant Commissioner and second appeal before the Tribunal. The Tribunal, for strange reasons, has rejected the assessee's appeal by its order dated 30.1.2007. Aggrieved by the said order passed by the Tribunal, the assessee is before us in this revision filed under Section 41 of the Act.

(5) Sri.Jose Joseph, learned counsel appearing for the assessee would contend that the assessing authority without following the orders and directions issued by the Tribunal in T.A.No.249 of 2001 dated 8.10.2001 ould not have adopted a different method altogether for completing the assessment for the assessment year 1990-91 and the learned counsel would further submit that without appreciating this aspect of the matter, the first appellate authority and the Tribunal could not have sustained the order passed by the assessing authority for the assessment year 1990-91.

(6) Sri.Muhammed Rafiq, learned counsel appearing for the

Revenue sought to justify the orders passed by the Tribunal.

(7) As we have already noticed in our order, an order of assessment had been passed by the assessing authority for the assessment year 1990-91 by adding two times the alleged suppression of the inter-State purchases. The orders of assessment had been confirmed by the first appellate authority. However, the Tribunal in the appeal filed by the assessee had allowed the appeal and had issued certain directions, such as, to furnish the copies of the invoices and declarations to the assessee before proceeding further with the orders of assessment. The assessing authority being of the opinion that he may not be in a position to comply with the orders and directions issued by the Tribunal, had filed an application for rectification. Without even waiting for an order on the said application, the assessing authority has proceeded to pass yet another fresh assessment order without complying with the positive directions issued by the Tribunal while disposing of the assessee's appeal in T.A.No.249 of 2001 dated 8.10.2001.

(8) The K.G.S.T. Act is an independent code by itself. The statute provides hierarchy of officers, appellate authorities and the Tribunals for effective functioning of the Act. The right of appeal to an aggrieved person is provided in the statute itself. Alterntively, it can be said it is a statutory right. The Tribunal is the last fact finding authority. The orders and directions issued by the Tribunal requires to be followed and complied with by the assessing authority. If that is not done, it would be subversion of judicial process. In the instant case, between the same parties, the Tribunal had issued certain directions. Those directions are binding on the assessing authority as well as the assessee. If for any reason, the parties are aggrieved by the orders and directions so issued, they either have to question the same before a superior

forum or to file a review petition, seeking review or rectification of the rder so passed. Without doing so, the assessing authority is not expected to pass an order contrary to the directions issued by the Tribunal. In the instant case, in fact, the assessing authority had filed an application before the tribunal for rectification of the order passed by the Tribunal. Even before the Tribunal could pass an order on the said application, the assessing authority has proceeded to pass yet another order, by ignoring the directions issued by the Tribunal. This action of the assessing authority is not only improper but also irregular. This aspect of the matter has not been considered by the first appellate authority as well as the Tribunal in the appeal filed by the assessee in T.A.No.455 of 2004. Though this fact was brought to the notice of the Tribunal, it has glossed over the matter. If this continues, the possibility of the assessing authorities just ignoring the orders passed by the superior authority may continue and this would lead to disastrous situation and the system would collapse. In view of that, in order to maintain discipline and also proper system in disposing of the matters, we hold that the assessing authority is bound to follow the orders and directions issued by his superior authorities, viz., the first appellate authority and the Tribunal. Bypassing those directions, the assessing authority cannot be passing a fresh assessment order. In that view of the matter, in our opinion, the prayer sought for by the revision petitioner in this revision petition requires to be granted.

(9) Accordingly, the following:

Order

(i) The Sales Tax Revision is allowed.

(ii) The order passed by the Tribunal in T.A.No.455 of 2004 dated 30.01.2007 is set aside. Liberty is reserved to the assessing authority to pass

an order of assessment in accordance with the directions issued by the Tribunal in T.A.No.249 of 2001 dated 8.10.2001.

Consequently, I.A. No.1921 of 2007 is dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

Harun-Ul-Rashid
Judge

vku/DK.